UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MICHELLE LUSZEY and NARCISCA CRESPO,
Individually, and on behalf of all others similarly situated,

Civil Action No.

Plaintiffs,

-against-

SUSAN A. NAM LLC d/b/a POLISHED BEAUTY BAR,
SUSAN NAM and MICKI NAM,

Defendants.
---X

CLASS AND COLLECTIVE ACTION COMPLAINT

The Plaintiffs, Michelle Luszey and Narcisca Crespo, individually and on behalf of all others similarly situated, by and through their undersigned counsel, as and for their Complaint against the Defendants, Susan A. Nam LLC d/b/a Polished Beauty Bar, Susan Nam, and Micki Nam, ("Defendants") respectfully allege as follows:

JURISDICTION AND VENUE

1. Plaintiff's bring this action under the Fair Labor Standards Act (hereinafter the "FLSA"), 29 U.S.C. §§ 201 et seq., the New York Labor Articles 6 and 19, and the New York Codes, Rules, and Regulations 142-2.2 (hereinafter the "New York Labor Articles") to recover unpaid overtime compensation and for other relief. This action is brought as a collective action pursuant to 29 U.S.C. §216(b) and as a state-law class action under Fed. R. Civ. P. 23(b)(3).

2. Jurisdiction over Plaintiff's FLSA claims is based upon Section 216(b) of the FLSA, 29 U.S.C. § 216(b), and upon 28 U.S.C. §1331.

3. The Court has supplemental jurisdiction over the plaintiff's state law claims pursuant to 28 U.S.C. §1367(a) because these claims are so related to the FLSA claims that they form part of the same case or controversy.

4. Venue in this district is appropriate under 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to these claims occurred in this judicial district. In addition, Defendants regularly conduct business in this district and are subject to personal jurisdiction in this district.

PARTIES

5. Plaintiff Michell Luszey (hereinafter "Luszey") is a resident of Queens County, New York.

6. Luszey was employed by Defendants from on or about December 2012 to November 2014.

7. Plaintiff Narcisca Crespo (hereinafter "Crespo") is a resident of Queens County, New York.

8. Crespo was employed by Defendants from on or about May 2012 to January 2015.

9. Upon information and belief, the Defendant, Susan A. Nam LLC, is a domestic limited liability company duly authorized to conduct business in the State of New York.

10. The Defendant, Susan Nam, is an individual residing in the State of New York.

11. Susan Nam is an officer, director, and/or managing agent of Susan A. Nam LLC who has and continues to participate in the day-to-day operations of Susan A. Nam LLC. At all relevant times, Susan Nam exercised operational control over Susan A. Nam LLC, controlled significant business functions of Susan A. Nam LLC, determined employee salaries, made hiring

decisions, and acted on behalf of and in the interest of Susan A. Nam LLC in devising, directing, implementing, and supervising the wage and hour practices and policies relating to the employees. As such, at all relevant times, Susan Nam has been an employer under the FLSA and the New York Wage and Hour Law.

12. The Defendant, Micki Nam, is an individual residing in the State of New York.

13. Micki Nam is an officer, director, and/or managing agent of Susan A. Nam LLC who has and continues to participate in the day-to-day operations of Susan A. Nam LLC. At all relevant times, Micki Nam exercised operational control over Susan A. Nam LLC, controlled significant business functions of Susan A. Nam LLC, determined employee salaries, made hiring decisions, and acted on behalf of and in the interest of Susan A. Nam LLC in devising, directing, implementing, and supervising the wage and hour practices and policies relating to the employees. As such, at all relevant times, Micki Nam has been an employer under the FLSA and the New York Wage and Hour Law.

FACTS

14. Defendants operate a nail salon known as Polished Beauty Bar located at 250 West 78th Street, New York, NY 10024.

15. Plaintiffs were employed by Defendants as Manicurists.

16. Plaintiffs' primary duties were to provide manicures, pedicures and customary waxing services to the nail salon patrons.

17. During her employment, Plaintiff Luszey worked 6 days a week.

18. During her employment, Plaintiff Luszey worked every Monday through Saturday from 10:00 a.m. to 8:00 p.m.

19. During her employment, Plaintiff Luszey worked 60 hours a week.

20. Plaintiff Luszey was not given any uninterrupted meal breaks.

21. During her employment, Luszey was paid a flat daily rate of $75.00 per day regardless of how many hours she worked.

22. The Defendants did not pay Luszey overtime compensation.

23. The Defendants did not pay Luszey time and a half her regular rate of pay when she worked more than 40 hours each week.

24. During her employment, Plaintiff Crespo worked 5 days a week.

25. During her employment, Plaintiff Crespo worked every Monday, Wednesday, Thursday, Friday and Sunday from10:00 a.m. to 8:00 p.m.

26. Plaintiff Crespo worked 50 hours a week.

27. Plaintiff Crespo was not given any uninterrupted meal breaks.

28. During her employment, Crespo was paid a flat daily rate of $70.00 per day regardless of how many hours she worked.

29. The Defendants did not pay Crespo overtime compensation.

30. The Defendants did not pay Crespo time and a half her regular rate of pay when she worked more than 40 hours each week.

31. Plaintiffs never hired employees or discharged employees.

32. Plaintiffs never set the schedules of any of the defendants' employees.

33. Plaintiffs never had the authority to hire employees or discharge employees.

34. Plaintiffs never promoted or demoted employees.

35. Plaintiffs never set the employees' pay rates and never decided whether employees should receive a pay increase.

36. Plaintiffs never had any responsibility for managing any department or subdivision of Defendants' business.

37. Plaintiffs never regularly supervised or directed the work of two or more full-time employees or their equivalent.

38. Plaintiffs' duties never required knowledge of an advanced type in a field of service or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

39. Plaintiffs never interviewed employees or recommended that any employees be hired or discharged.

40. Plaintiffs never handled employee grievances and never disciplined employees.

41. Plaintiffs never provided for the safety and security of the defendants' employees.

42. Plaintiffs never planned or controlled the defendants' budget.

43. Plaintiffs never monitored or implemented legal compliance measures for the defendants.

44. Plaintiffs never gave any written evaluations to any of the defendants' employees.

45. The Defendants employ other Manicurists.

46. These Manicurists are not paid overtime compensation.

47. These Manicurists regularly work more than 40 hours per week.

48. These Manicurists are not paid time and a half their regular rates of pay when they work more than 40 hours each week.

49. These Manicurists are subject to the same illegal practices and policies as the named Plaintiffs.

50. Defendants managed Plaintiffs and other similarly situated employees' employment, including the amount of overtime worked. Defendants dictated, controlled, and ratified the wage and hour and all related employee compensation policies.

51. Defendants' failures to pay proper wages in a timely manner were made without good faith, willfully, and with a reckless disregard for Plaintiff's rights; and Plaintiffs have been damaged by such failures.

GENERAL ALLEGATIONS

52. Plaintiffs, individually, and on behalf of all similarly situated current and former employees of the Defendants, including its subsidiaries and affiliated companies, bring this action as a collective action under the FLSA to recover, *inter alia*, unpaid overtime compensation, minimum wages and statutory penalties owed to the Plaintiffs and all other similarly situated employees.

53. Defendants' failure to pay the Plaintiffs and all other similarly situated employees overtime compensation when these employees worked in excess of 40 hours per week has violated the FLSA and the NYLL.

54. As a result of these unlawful practices, the Plaintiffs and the similarly situated employees suffered a loss of wages.

COLLECTIVE ACTION ALLEGATIONS

55. Plaintiffs seek to proceed as a collective action pursuant to 29 U.S.C. §216(b) on behalf of himself and the following class of persons:

> All Manicurists who worked for the Defendants at any time from six years prior to the filing of this action to the entry of judgment in this action who give their consent, in writing, to become party plaintiffs (hereinafter the "FLSA Class").

56. Plaintiffs and other members of the FLSA Class are similarly situated inasmuch as, *inter alia*, they were required to work in excess of 40 hours a week without being paid overtime compensation.

57. Defendants have known that the Plaintiffs and similarly situated employees have performed work that has required overtime compensation. Nonetheless, Defendants have operated under a scheme to deprive the Plaintiffs and the other members of the FLSA Class of overtime compensation by failing to properly compensate them for all time worked.

58. Defendants' conduct, as alleged herein, has been willful and has caused significant damage to the Plaintiffs and the similarly situated employees.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT
29 U.S.C. §201 ET SEQ.
FAILURE TO COMPENSATE FOR OVERTIME

59. Plaintiffs reassert and reallege the allegations set forth in each of the above paragraphs as though fully set forth herein.

60. The FLSA regulates the payment of wages by employers whose employees are "engaged in commerce or engaged in the production of goods for commerce, or are employed in an enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. § 207(a)(1).

61. The corporate Defendant was and is subject to the overtime pay requirements of the FLSA because said Defendants are an enterprise engaged in commerce or in the production of goods for commerce.

62. Upon information and belief, the gross annual volume of sales made or business done by the corporate defendant for the years 2014, 2013, and 2012 was not less than $500,000.00.

63. At all times relevant to this action, Plaintiffs and the similarly situated employees have been entitled to the rights, benefits, and protections granted by the FLSA, 29 U.S.C. § 207, *et seq*.

64. Section 207(a)(1) of the FLSA states that an employee must be paid overtime, equal to at least one and one half times the employee's regular rate of pay, for all hours worked in excess of 40 per week.

65. By the above-alleged conduct, Defendants have violated the FLSA by failing to pay the FLSA collective action Plaintiffs overtime compensation as required by the FLSA.

66. Section 13 of the FLSA, 29 U.S.C. §213, exempts certain categories of employees from the overtime compensation requirements set forth in Section 207(a)(1) of the FLSA. However, none of the Section 13 exemptions apply to the Plaintiffs or the similarly situated employees because they have not met the requirements for coverage under the exemptions.

67. The Plaintiffs and the similarly situated employees are victims of a uniform company-wide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all members of the FLSA collective action and has deprived them of overtime compensation.

68. Defendants have acted willfully and have either known that their conduct violated the FLSA or have shown reckless disregard for the matter of whether their conduct violated the FLSA. Defendants have not acted in good faith with respect to the conduct alleged herein.

69. As a result of Defendants' violations of the FLSA, Plaintiffs and all others similarly situated have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation, pursuant to 29 U.S.C. § 216(b).

COUNT II
VIOLATION OF THE FAIR LABOR STANDARDS ACT
29 U.S.C. §201 ET SEQ.
FAILURE TO PAY MINIMUM WAGES

70. The FLSA regulates the payment of wages by employers whose employees are "engaged in commerce or engaged in the production of goods for commerce, or are employed in an enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. § 206(a).

71. Defendants routinely and regularly failed to pay Plaintiffs and FLSA collective action Plaintiffs the applicable minimum wage, in violation of 29 U.S.C. §206(a).

72. The corporate defendant was and is subject to the minimum wage requirements of the FLSA because said Defendant is an enterprise engaged in commerce or in the production of goods for commerce.

73. Upon information and belief, the gross annual volume of sales made or business done by corporate defendant for the years 2014, 2013, and 2012 was not less than $500,000.00.

74. At all times relevant to this action, Plaintiffs and the similarly situated employees have been entitled to the rights, benefits, and protections granted by the FLSA, 29 U.S.C. § 206, *et seq*.

75. By the above-alleged conduct, Defendants have violated the FLSA by failing to pay the FLSA collective action Plaintiffs minimum wages as required by the FLSA.

76. The Plaintiffs and the similarly situated employees are victims of a uniform company-wide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all members of the FLSA collective action and has deprived them of minimum wages.

77. Defendants have acted willfully and have either known that their conduct violated the FLSA or have shown reckless disregard for the matter of whether their conduct violated the FLSA. Defendants have not acted in good faith with respect to the conduct alleged herein.

78. As a result of Defendants' violations of the FLSA, Plaintiffs and all others similarly situated have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation, pursuant to 29 U.S.C. § 216(b).

STATE-WIDE CLASS ALLEGATIONS

79. The Plaintiffs also seek to maintain this action as a class action, pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of themselves individually and all other similarly situated employees who, during the relevant statute of limitations period, have worked as Manicurists with respect to the claims pleaded in Counts III, IV and V of the complaint.

80. Fed. R. Civ. P. 23(b)(3) provides that a cause of action may be maintained as a class action if the following elements are met:

(a) The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

(b) There are questions of law or fact common to the class which predominate over and questions affecting only individual members;

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) The representative parties will fairly and adequately protect the interests of the class; and

(e) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Class Definitions

81. Plaintiffs seek certification of a class consisting of the following individuals:

All persons who have worked as Manicurists for the Defendants at any time from six years prior to the filing of this Action to the entry of judgment in this Action (hereinafter the "New York Class").

Numerosity

82. Plaintiffs satisfy the numerosity requirements as the proposed class is so numerous that joinder of all members is impracticable.

83. The proposed class can be identified and located using the Defendants' payroll and personnel records. Class members may be informed of the pendency of this action by direct mail and/or published and broadcast notice.

Common Questions of Fact or Law

84. There are questions of fact and law common to each class member which predominates over any questions affecting only individual members. The questions of fact and law common to each class member arising from Defendants' actions include, but are not limited to, the following:

(a) Whether the class members have qualified for exempt status;

(b) Whether Defendants conducted an analysis of class members' compensation before failing to pay them overtime compensation;

(c) Whether Defendants conducted an analysis of class members' duties and tasks before failing to pay them overtime;

(d) Whether the class members have been uniformly classified as exempt from overtime requirements;

(e) Whether Plaintiffs and class members have regularly worked in excess of 40 hours per week;

(f) Whether Plaintiffs and class members have been expected or required to work in excess of 40 hours per week; and

(g) Whether Defendants' failure to pay overtime compensation has been willful.

85. The questions set forth above predominate over any questions affecting only individual persons. With respect to considerations of consistency, economy, efficiency, fairness, and equity, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Typicality

86. Plaintiffs claims are typical of the claims of the class members. As a result of Defendants' unlawful conduct, Plaintiffs suffered similar injuries as those suffered by other members of the respective class they seek to represent.

Adequacy

87. Plaintiffs are an adequate representative of the class they seek to represent because they are a member of such class, and their interests do not conflict with the interests of the members of the class they seek to represent. The interests of the class members will be fairly and adequately protected by Plaintiffs and their undersigned counsel. Plaintiffs have hired competent attorneys who are experienced in class action litigation of this type and who are committed to the prosecution of this Action.

Superiority

88. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense if these claims were brought individually.

89. Moreover, as the damages suffered by each class member may be relatively small, the expenses and burden of individual litigation would make it difficult for Plaintiffs to bring individual claims.

90. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of class members to protect their interests.

COUNT III
VIOLATION OF THE NEW YORK LABOR ARTICLE 6 AND 19
FAILURE TO PAY OVERTIME UNDER NEW YORK LABOR LAW

91. Plaintiffs reassert and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

92. At all times relevant to this Action, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§2 and 651.

93. Under New York law, an employee must be paid overtime, equal to one and one half times the employee's regular rate of pay, for all hours worked in excess of 40 per week in the manner and methods provided by the FLSA. 12 NYCRR §142-2.2.

94. By the above-alleged conduct, Defendants have failed to pay members of the New York Class overtime compensation as required by the New York Labor Articles.

95. Plaintiffs and the other members of the New York Class are not exempt from the overtime provisions of the New York Labor Articles, because they have not met the requirements for any of the reduced number of exemptions available under New York law.

96. Plaintiffs and the other members of the New York Class are victims of a uniform company-wide compensation policy. This uniform policy, in violation of the New York Labor Articles, has been applied to all members of the New York Class and has deprived them of proper overtime compensation.

97. Defendants have acted willfully and have either known that their conduct violated the New York Labor Articles or have shown a reckless disregard for the matter of whether their conduct violated the New York Labor Articles. Defendants have not acted in good faith with respect to the conduct alleged herein.

98. As a result of Defendants' violations of the NYLL, Plaintiffs and all others members of the New York class have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation, pursuant to the NYLL.

COUNT IV
NYLL Spread of Hours Claim

99. That the Plaintiffs and other members of the New York class worked shifts of more than ten hours for most work days during their employment.

100. That the Defendants never paid spread of hours pay to the Plaintiffs or members of the New York class as required under Part 142, section 142-2.4 ("Spread of Hours Pay") of Title 12 of the Official Compilation of Codes, Rules and Regulations promulgated by the

Commissioner of Labor pursuant to the Minimum Wage Act (Article 19 of the New York State Labor Law).

101. Such failures constituted outrageous conduct, made knowingly and willfully, or with a reckless indifference to Plaintiffs' rights.

102. As a result of defendants' violation of the NYLL and the regulations promulgated therein, Plaintiffs have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation.

COUNT V
NYLL Minimum Wage Claim

103. At all times relevant to this action, Plaintiffs were employed by Defendant within the meaning of New York Labor Law §§2 and 651.

104. Defendants willfully failed to pay Plaintiff and members of the class at the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law §652.

105. As a result of Defendants' unlawful practices, the Plaintiffs and the members of the class have suffered a loss of wages.

106. As a result of defendant's violation of the NYLL and the regulations promulgated therein, Plaintiffs and the members of the class have incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, by and through his attorneys, Neil H. Greenberg & Associates, P.C., demand judgment against Defendants, jointly and severally and in favor of Plaintiffs and all others similarly situated, for a sum that will properly, adequately, and completely compensate Plaintiffs and all others similarly situated for the nature, extent, and duration of the damages, costs of this action, and as follows:

A. Order the Defendants to file with this Court and furnish to counsel a list of all names and addresses of all Manicurists who currently work for or who have worked for Defendants within the last six years;

B. Authorize Plaintiff's counsel to issue a notice at the earliest possible time to all current and former Manicurists employed by the Defendants during the six years immediately preceding this Action, informing them that this Action has been filed, of the nature of the Action, and of their right to opt into this lawsuit if they worked in excess of 40 hours in a week during the liability period, for which they were not paid the FLSA-required overtime;

C. Authorize Plaintiffs to certify his claims under the state law of New York;

D. Declare and find that the Defendants committed one or more of the following acts:

1. Violated provisions of the FLSA by failing to pay overtime wages to Plaintiffs and similarly situated persons who opt into this Action;

2. Willfully violated the overtime provisions of the FLSA;

3. Violated the provisions of the NYLL by failing to pay overtime wages to Plaintiffs and all class members;

4. Willfully violated the applicable provisions of the NYLL.

E. Award compensatory damages, including all overtime compensation owed, in an amount according to proof;

F. Award interest on all NYLL claims and other compensation due accruing from the date such amounts were due;

G. Award all costs, attorney's fees incurred in prosecuting this action as well as liquidated damages under the FLSA and NYLL.

H. Grant leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and

I. Provide such further relief as the Court deems just and equitable.

Dated: Westbury, New York
August 12, 2015

Neil H. Greenberg & Associates, P.C.
Attorneys for the Plaintiffs
By: Neil H. Greenberg, Esq.
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FAIR LABOR STANDARDS ACT CONSENT FORM

I, the undersigned, consent to be a party in **Luszey v. Polished Beauty Bar et al.** in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. section 216(b).

Dated: Westbury, New York
June 19, 2015

Michelle Luszey

FAIR LABOR STANDARDS ACT CONSENT FORM

I, the undersigned, consent to be a party in **Crespo v. Polished Beauty Bar et al.** in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. section 216(b).

Dated: Westbury, New York
June 22, 2015

Narcisa Crespo